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WHITTAKER CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANTA CLARITA VALLEY WATER AGENCY.

Plaintiffs,

vs.

WHITTAKER CORPORATION.

Defendants.

WHITTAKER CORPORATION

Third-Party Plaintiff.

vs.

KEYSOR-CENTURY CORP., a California Corporation; and SAUGUS INDUSTRIAL CENTER, LLC, a Delaware Limited Liability Company,

Third-Party Defendants

Case No. 2:18-CV-6825-SB (RAOx)
Assigned to Hon. Stanley Blumenfeld, Jr.

WHITTAKER CORPORATION'S OBJECTIONS TO EVIDENCE OFFERED BY PLAINTIFF SANTA CLARITA VALLEY WATER AGENCY'S MOTION FOR SUMMARY JUDGMENT

Date: January 8, 2021
Time: 8:30 a.m.
Dept.: 6C

Action Filed: August 8, 2018
Trial Date: January 19, 2021

WHITTAKER CORPORATION (“Whittaker”) submits the following objections to the evidence filed by SANTA CLARITA VALLEY WATER AGENCY (“SCVWA”) in support of their motion for partial summary judgment.

I. ABERCROMBIE DECLARATION

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
<p>“In my experience, the discharge of well water to the Santa Clara River has not caused concern with citizens near the water discharge point or other citizens in general.”</p> <p>Abercrombie Declaration ¶ 6.</p>	<ul style="list-style-type: none"> • Lack of personal knowledge. Fed. R. Evid. 602 • Lack of foundation. • Hearsay. Fed. R. Evid. 802 <p>Mr. Abercrombie does not know, and cannot possibly know, whether each and every citizen is concerned with the discharge of well water into the river. To the extent certain citizens have told Mr. Abercrombie that they are not concerned, these communications are inadmissible hearsay.</p>	Sustain/Overrule
<p>“As a result of the Whittaker Site releasing multiple contaminants, the DDW designated the groundwater near the</p>	<ul style="list-style-type: none"> • Lack of personal knowledge. Fed. R. Evid. 602 • Lack of foundation. • Hearsay. Fed. R. Evid. 802 	Sustain/Overrule

1	Whittaker Site to be an ‘extremely impaired water source,’ which is subject to strict drinking water supply permit requirements pursuant to DDW policy 97-005.” Abercrombie Declaration ¶ 7.	• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 Mr. Abercrombie, who fails to provide any curriculum vitae or other qualifications in his declaration, does not have the expertise to determine why the DDW designated the groundwater near the Whittaker Site to be an “extremely impaired water source.” Further, the DDW policy is based on a contaminant exceeding the MCL, and only perchlorate has exceeded the MCLs. Nor can he opine on whether the alleged contamination was caused by releases of contaminants at the Whittaker site as opposed to other sites. To the extent DDW made this opinion, the statement is hearsay.	
25	“There is no question that SCV Water has kept the stakeholders to this	• Lack of personal knowledge. Fed. R. Evid. 602 • Lack of foundation.	Sustain/Overrule

1	litigation informed of the	• Hearsay. Fed. R. Evid. 802
2	response actions taken	• Unqualified expert opinion.
3	and response costs	Fed. R. Evid. 104(a) and 702
4	incurred due to	
5	Whittaker's groundwater	Mr. Abercrombie is not qualified
6	contamination."	to opine on whether the
7	Abercrombie	stakeholders have been kept
8	Declaration ¶ 10.	informed, as the term stakeholder
9		has a legal meaning in the context
10		of NCP compliance. Further the
11		statement is a mere conclusion
12		without any support.
13		
14		Nor can he opine on the presence
15		of contaminants originated from
16		the Whittaker Site as opposed to
17		other locations or whether
18		Whittaker polluted the
19		groundwater.
20		
21		To the extent Mr. Abercrombie is
22		adopting this opinion from
23		another source, the statement is
24		hearsay. Further, Mr.
25		Abercrombie is merely making a
26		conclusory statement.
27		
28		

1	“Currently, three of	• Lack of personal knowledge. Fed. R. Evid. 602	Sustain/Overrule
2	SCVWA's wells cannot	• Lack of foundation.	
3	be used for potable water	• Hearsay. Fed. R. Evid. 802	
4	because the groundwater	• Unqualified expert opinion.	
5	is contaminated with	Fed. R. Evid. 104(a) and 702	
6	perchlorate and/or		
7	volatile organic		
8	compounds ('VOC')	There is no foundation that the	
9	from the Whittaker Site.”	presence of VOC's below the	
10	Abercrombie	MCLs is preventing the wells	
11	Declaration, Exhibit C,	from being used as potable water.	
12	¶ 2.	The DDW policy, which forms	
13		the basis forms the opinions, is	
14		based on a contaminant exceeding	
15		the MCL, and only perchlorate	
16		has exceeded the MCLs.	
17			
18			
19		Mr. Abercrombie is not qualified	
20		to opine on whether the presence	
21		of contaminants in the wells	
22		originated from the Whittaker	
23		Site as opposed to other locations.	
24		To the extent Mr. Abercrombie is	
25		adopting this opinion from	
26		another source, the statement is	
27		hearsay.	
28			

1 **II. ALVORD DECLARATION**

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
<p>“DDW is requiring SCV Water to comply with DDW’s 97-005 Policy for Domestic Use of Extremely Impaired Sources because the V-201 extracts groundwater with multiple contaminants near the Whittaker-Bermite Site.”</p> <p>Alvord Declaration ¶ 4</p>	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation <p>Mr. Alvord has no personal knowledge as to why DDW is requiring SCV Water to comply with its 97-005 Policy and is merely speculating on its motives based on hearsay statements allegedly made by “representatives at DDW.”</p> <p>There is no foundation that the presence of VOC’s below the MCLs is preventing the wells from being used as potable water. The DDW policy, which forms the basis for the opinions, is based on a contaminant exceeding the MCL, and only perchlorate has exceeded the MCLs.</p>	Sustain/Overrule

1	"In particular, during the	• Hearsay. Fed. R. Evid. 802	Sustain/Overrule
2	meetings with DDW that	• Lack of personal knowledge.	
3	I attend, Ms. Orr and Mr.	Fed. R. Evid. 602	
4	O'Keefe both informed	• Lack of foundation	
5	me that SCV Water must		
6	address VOCs detected in		
7	groundwater pumped	This paragraph constitutes	
8	from V-201 before DDW	hearsay because Mr. Alvord	
9	will approve any new	repeats what Ms. Orr and Mr.	
10	permit for the well to be	O'Keefe allegedly stated at a	
11	used as a source of	meeting. These statements are	
12	drinking water, even	offered for the truth of the matter	
13	though the level currently	asserted. Further, Mr. Alvord has	
14	detected in the well for	no personal knowledge as to why	
15	TCE is below the MCL.	DDW will not issue a permit to	
16	DDW's comments and	SCV Water and is merely relying	
17	requests for information	on out-of-court statements to	
18	confirm that DDW	speculate on DDW's motives.	
19	follows this practice for		
20	severely impaired sources		
21	to require removing the		
22	contaminant with		
23	treatment facilities or		
24	blending it to below		
25	detection levels. In the		
26	case of V-201, however,		
27	DDW has not permitted		
28			

1	the same blending option 2 to achieve the 3 ‘operational goal’ of non- 4 detect that is currently 5 incorporated in SCV 6 Water’s other wells that 7 are contaminated with 8 both perchlorate and 9 VOCs. Based on these 10 meetings with DDW, it is 11 clear that DDW will not 12 issue a permit for SCV 13 Water to resume use of 14 well V-201 for drinking 15 water unless the VOCs in 16 that well are addressed to 17 DDW’s satisfaction.” 18 Alvord Declaration ¶ 8		
19	“Finally, before DDW 20 will issue a permit to for 21 use of V-201 or other 22 wells for drinking water, 23 DDW will hold public 24 hearings and we will 25 participate in a public 26 comment period. SCV 27 Water’s takes its	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602.• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Irrelevant <p>Mr. Alvord cannot know what DDW will do in the future prior to issuing a permit and is</p>	Sustain/Overrule

1	commitment to communicate with the public, and with DDW and other state agencies, very seriously.”	speculating. Mr. Alvord further cannot testify certainly that SVC Water will participate in a public hearing in the future. Finally, whether or not SCV Water takes its commitment seriously is irrelevant in determining whether it fulfills the commitment.	
9	Alvord Declaration, Exhibit A “Santa Clarita Valley Water Agency Regular Board Meeting Agenda”	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Irrelevant• Lack of Foundation <p>Exhibit A to Mr. Alvord’s Declaration, constituting an “Amended Agenda” from a board meeting of SCV Water should be struck in its entirety. There is no indication of who authored the agenda. Mr. Alvord does not claim to have written the agenda nor does he identify who wrote it. Mr. Alvord’s declaration fails to lay foundation for the exhibit, failing to establish that he is competent to testify about it. The statements within the agenda are hearsay. Further, the fact that one</p>	Sustain/Overrule

1	agenda contains a paragraph setting forth a procedure for the public to make written comments is irrelevant in establishing the public involvement necessary to comply with the national contingency plan.	
8	Alvord Declaration, Exhibit B “News Release: Perchlorate Levels Reach Actionable Level at Out-of-Service Well”	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Irrelevant. Fed. R. Evid. 402• Prejudicial. Fed. R. Evid. 403• Lack of personal knowledge Fed. R. Evid. 602.• Lack of foundation• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 <p>Exhibit B to Mr. Alvord’s declaration should be struck in its entirety. The exhibit is a press release concerning Well V-205, apparently written by SCV Water’s Public Information Officer, Kathie Martin. The press release contains various statements attributed to other individuals. The press release is hearsay, as it is a statement by</p>

1	Kathie Martin. Within the	
2	statement are numerous instances	
3	of hearsay within hearsay, as Ms.	
4	Martin quotes other people and	
5	other sources throughout the	
6	press release. While Plaintiff may	
7	argue that the press release is not	
8	offered for the truth of the matter	
9	asserted and is being offered as	
10	“an example” of a press release,	
11	this argument is undercut by the	
12	fact that the press release	
13	concerns the very subject matter	
14	of this litigation—the alleged	
15	contamination of Well V-205.	
16	Whatever relevance this press	
17	release may have in showing a	
18	sample press release is	
19	outweighed by the unfair	
20	prejudice caused by the substance	
21	within the press release, which	
22	includes conclusions that	
23	attributes the contamination of	
24	the wells to Whittaker. Moreover,	
25	there is no showing that Ms.	
26	Martin is at all qualified to opine	
27	on the issues she offers in the	
28		

1	press release, including opinions	
2	concerning health issues related	
3	to perchlorate exposure.	

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5 **III. STONE DECLARATION**

6

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 “Contamination from the Whittaker Bermite Site (“Whittaker Site”) has impacted SCV Water in many ways. First, due to the high concentrations of multiple contaminants beneath and near the Whittaker Site, the California State Water Resources Control Board's Division of Drinking Water (“DDW”) has designated the Saugus Formation as an extremely impaired water source, which significantly extends the time required to obtain a water supply permit.”	• Lack of personal knowledge. Fed. R. Evid. 602 • Lack of foundation. • Hearsay. Fed. R. Evid. 802 • Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay. Further, Mr. Stone lacks personal knowledge of DDW's rationale for designating the Saugus Formation as an extremely impaired water source.	Sustain/Overrule

1	Stone Declaration ¶ 4	
2	“SCV Water has taken 3 many measures to 4 mitigate the impacts of 5 Whittaker's groundwater 6 contamination on its 7 production wells and to 8 prevent the contamination 9 from spreading further 10 down gradient from the 11 Whittaker Site to other 12 wells. While DTSC has 13 provided oversight of 14 SCV Water's offsite 15 groundwater activities, it 16 has not actively engaged 17 Whittaker to address the 18 groundwater 19 contamination that 20 migrated from its site.”	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 <p>Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay. Mr. Stone further lacks personal knowledge of what DTSC has addressed with Whittaker and lacks foundation to make this generalized statement.</p>
21	Stone Declaration ¶ 6	<p>Further, Mr. Stone's opinion that DTSC has not been “actively engaged” is his opinion only as he is neither qualified to reach that conclusion nor does he present</p>

1		any evidence to support the conclusion.	
2			
3	“However, the project identified in the 2005 IRAP did not achieve the IRAP goals to contain the spread of perchlorate and to restore lost groundwater supply caused by contamination from the Whittaker Site.”	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 <p>Mr. Stone does not have the expertise to opine that the alleged contamination originated from the Whittaker Site as opposed to another property. To the extent someone else made this opinion and Mr. Stone is adopting it, the statement is hearsay.</p>	Sustain/Overrule
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12	Stone Declaration ¶ 7		
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18	“Instead of providing a five-year review, SCV Water proposed to submit an amendment to the 2005 IRAP to include both V-201 and V-205 as additional containment wells with the necessary treatment to address the perchlorate and VOC	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 <p>Mr. Stone repeating alleged statements from DDW concerning DDW’s determination</p>	Sustain/Overrule
19			
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1	contamination, which 2 DDW has determined 3 pose unacceptable health 4 risks to potable water 5 consumers.” 6 Stone Declaration ¶ 7	constitutes inadmissible hearsay. Mr. Stone is not qualified to independently determine whether the water poses an unacceptable health risk to potable water consumers.	
7	“In that letter, Mr. Gill 8 stated that DTSC agreed 9 to SCV Water's proposal 10 for an amendment to the 11 2005 IRAP.” 12 Stone Declaration ¶ 8	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802 <p>Mr. Stone summarizes what Mr. Gill apparently said in a letter and offers the statement for the truth of the matter asserted. This constitutes inadmissible hearsay.</p>	Sustain/Overrule
14	“As stated in the 2005 15 IRAP, the objective of 16 the remedy is to contain 17 perchlorate 18 contamination from the 19 Site from impacting 20 down gradient Saugus 21 Formation production 22 wells. The specific 23 remedy was selected in 24 anticipation that it would 25 comply with State Water 26 Resources Control	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 <p>Mr. Stone's summary of what he contends the 2005 IRAP says constitutes hearsay. Mr. Stone lacks any personal knowledge of the motivation behind selecting the specific remedy because he did not begin working for Castaic</p>	Sustain/Overrule

1	Board Division of 2 Drinking Water ("DDW") 3 Policy 97-005 for 4 Extremely Impaired 5 water sources." Stone Declaration, Exhibit A, Letter from Matthew Stone.	Lake Water Agency until 2015, ten years after Kennedy Jenks authored the 2005 IRAP.	
9	"The IRAP remedy is 10 required to be reopened 11 because the remedy was 12 not effective in 13 containing the plume and 14 according to DDW is not 15 protective of human 16 health due to the volatile 17 organic compounds 18 ("VOCs") in the wells." Stone Declaration, Exhibit A, Letter from Matthew Stone.	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 Mr. Stone's reiteration of what DDW allegedly determined in connection with the IRAP remedy constitutes hearsay. Mr. Stone lacks the qualifications to independently opine on this matter.	Sustain/Overrule
23	Stone Declaration, Exhibit B, Letter from Tajinder Gill, P.E.	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802 The letter from Tajinder Gill of the DTSC should be excluded in its entirety. The letter is hearsay	Sustain/Overrule

1 as it is a statement, made by a
2 declarant, out of court, offered to
3 prove the truth of the matter
4 asserted, specifically that DTSC
5 agreed to SCV Water's proposal
6 for an amendment to the 2005
7 IRAP. Further, the letter contains
8 hearsay within hearsay as Mr.
9 Gill relays statements made by
10 unknown members of the Santa
11 Clarita Valley Water Agency
12 staff within his letter.

13

14 **IV. GEE DECLARATION**

15

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
Gee Declaration, Ex. F “Expert Report of Mark R. Trudell”	<ul style="list-style-type: none">• Noncompliance with Fed. R. Civ. Pro. 56(e)• Hearsay. Fed. R. Evid. 802• Inadmissible expert testimony. Fed. R. Evid. 104(a) and 702• Lack of personal knowledge. Fed. R. Evid. 602 <p>Exhibit F, which constitutes a report by Mark R. Trudell should be struck in its entirety. Dr.</p>	Sustain/Overrule

1	Trudell did not execute his report 2 under penalty of perjury, nor did 3 he submit a declaration attesting 4 to the facts contained in his 5 report. This does not comply with 6 Fed. R. Civ. Pro. § 56(e). “[F]or 7 an expert opinion to be 8 considered on summary 9 judgment, it must be 10 accompanied by a proper 11 affidavit or deposition testimony; 12 courts in the Ninth Circuit have 13 routinely held that unsworn 14 expert reports are inadmissible.” 15 <u>Sansi North America, LLC v. LG</u> 16 <u>Electronics USA, Inc.</u> , 2019 WL 17 8168069 (C.D. Cal. 2019). “The 18 substance of this report was not 19 sworn to by the alleged expert. 20 Therefore, the purported expert's 21 report is not competent to be 22 considered on a motion for 23 summary judgment.” 24 <u>Fowle v. C&C Cola</u> , 868 F.2d 59, 25 67 (3rd Cir. 1989) (finding that 26 expert's report attached to the 27 declaration of plaintiff's counsel	28
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1	does not comply with Rule 56(e), since the substance of the report was not sworn to by the alleged expert).		
6	Gee Declaration, Ex. G “Expert Report of Richard J. Hughto”	<ul style="list-style-type: none">• Noncompliance with Fed. R. Civ. Pro. 56(e)• Hearsay. Fed. R. Evid. 802• Inadmissible expert testimony. Fed. R. Evid. 104(a) and 702• Lack of personal knowledge. Fed. R. Evid. 602 <p>Exhibit G, which constitutes a report by Richard J. Hughto should be struck in its entirety. First, Dr. Hughto did not execute his report under penalty of perjury, nor did he submit a declaration attesting to the facts contained in his report. This does not comply with Fed. R. Civ. Pro. § 56(e). “[F]or an expert opinion to be considered on summary judgment, it must be accompanied by a proper affidavit or deposition testimony;</p>	Sustain/Overrule

1 courts in the Ninth Circuit have
2 routinely held that unsworn
3 expert reports are inadmissible.”
4 Sansi North America, LLC v. LG
5 Electronics USA, Inc., 2019 WL
6 8168069 (C.D. Cal. 2019). “The
7 substance of this report was not
8 sworn to by the alleged expert.
9 Therefore, the purported expert's
10 report is not competent to be
11 considered on a motion for
12 summary judgment.”
13 Fowle v. C&C Cola, 868 F.2d 59,
14 67 (3rd Cir. 1989) (finding that
15 expert's report attached to the
16 declaration of plaintiff's counsel
17 does not comply with Rule 56(e),
18 since the substance of the report
19 was not sworn to by the alleged
20 expert).
21 Second, Dr. Hughto's report is
22 essentially a summary of
23 inadmissible facts. Dr. Hughto
24 recites a historical recounting of
25 the Whitaker Site based on his
26 review of various periodicals and
27 other documents. Dr. Hughto's

1	“Key Opinions” are merely recitations of facts gleaned from documents reviewed. “The law is clear, however, that an expert report cannot be used to prove the existence of facts set forth therein.” <u>In re Citric Acid</u> <u>Litigation</u> , 191 F.3d 1090, 1102 (9th Cir. 1999); <u>Stonefire Grill</u> , <u>Inc. v. FGF Brands, Inc.</u> , 987 F. Supp.2d 1023, 1039 (C.D. Cal. 2013) (“Tripoli lacks personal knowledge for most of the facts in his report and therefore could not testify to them to prove the truth of the matter. Once these inadmissible facts are excluded, there are very few opinions remaining which would require enlightenment from those having a specialized understanding of the subject involved in the dispute.”) For these reasons, Exhibit G of the Gee Declaration should be excluded in its entirety.		
26	Gee Declaration, Exhibit Q, Whitaker’s	• Irrelevant. Fed. R. Evid. 802 • More prejudicial than probative	Sustain/Overrule

1	Responses to SCVWA's	Exhibit Q has no relevancy since	
2	Interrogatories, Set	it is only the assertion of proper	
3	Two	objections to interrogatories	
4		served by SCVWA. The	
5		interrogatories were improper as	
6		they were in violation Rule 33,	
7		which limits Plaintiff to 25	
8		interrogatories. Each	
9		interrogatory effectively	
10		contained over 50 subparts since	
11		it asked for responses to each	
12		affirmative defense. Whittaker	
13		properly objected and provided a	
14		general response.	
15			
16	Gee Declaration,	• Hearsay. Fed. R. Evid. 802	Sustain/Overrule
17	Exhibit W, Email	• Lack of Foundation	
18	exchange between	• Lack of personal knowledge.	
19	James Saenz, Karen	Fed. R. Evid. 602	
20	Wong, and Lillian		
21	Luong.	Exhibit W of Mr. Gee's	
22		Declaration constitutes two	
23		emails dated December 7, 2010.	
24		The first email is from Karen	
25		Wong at the California	
26		Department of Public Health to	
27		Kames Saenz at the Valencia	
28			

1	Water Company. The second is a 2 reply from Mr. Saenz to Ms. 3 Wong. The statements contained 4 in these emails are hearsay. They 5 are made by declarants outside of 6 court and offered to prove the 7 truth of the matter asserted, 8 specifically, that Well 201 was 9 taken offline on September 1, 10 2010. 11 12 Further, there is no foundation as 13 to the authenticity of the emails.		
14	“Saugus Well 1 and 15 Saugus Well 2 are 16 drinking water wells that 17 were shut down in 1997 18 because of perchlorate 19 contamination that had 20 migrated from the 21 Whittaker-Bermite 22 property in Santa Clarita. 23 After extensive analysis, 24 CLWA oversaw the 25 design and construction 26 of a water treatment 27 system to remove	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Unqualified expert opinion. Fed. R. Evid. 104(a) and 702 Exhibit X is a Notice of Public Comment, which was written by an unknown author. The Notice is hearsay, as it is a statement by an unknown declarant offered to prove the truth of the matter asserted, including the contention	Sustain/Overrule

1 perchlorate from these 2 wells. CDPH must issue a 3 permit amendment to 4 CLWA before this water 5 may be served to the 6 public. Because of the 7 perchlorate 8 contamination of these 9 wells, CDPH has 10 classified these wells as 11 "Extremely Impaired 12 Sources" and followed a 13 special meeting process, 14 which includes a public 15 comment period and 16 public meeting."	that CDPH classified the wells as "Extremely Impaired Sources" and that the contamination migrated from the Whittaker site. Further, there is no showing that whoever wrote this Notice is at all qualified to opine on the issues offered therein, including opinions concerning where the alleged contamination originated.	
Gee Declaration, Exhibit X, Notice of Public Comment Period.	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Lack of Foundation• Lack of personal knowledge. <p>Fed. R. Evid. 602</p> <p>Exhibit Y of Mr. Gee's Declaration constitutes a letter</p>	Sustain/Overrule

1	dated December 30, 2010, which	
2	is purportedly authored by Jeff	
3	O'Keefe at the California	
4	Department of Public Health to	
5	Brian Folsom at Castaic Lake	
6	Water Agency. Attached to the	
7	letter are excerpts from a water	
8	supply permit and engineering	
9	report. "As required by Rule 56,	
10	documentary materials need	
11	authentication through affidavits	
12	or declarations from individuals	
13	with personal knowledge of the	
14	document." <u>Id.</u> There is nothing	
15	in Mr. Gee's declaration to	
16	establish the document is what it	
17	purports to be.	
18	Gee Declaration,	Hearsay. Fed. R. Evid. 802
19	Exhibit Z, Press release.	Prejudicial. Fed. R. Evid. 403
20		Lack of personal knowledge. Fed.
21		R. Evid. 602
22		Lack of foundation
23		Unqualified expert opinion. Fed.
24		R. Evid. 104(a) and 702
25		
26		Exhibit Z to Mr. Gee's
27		declaration should be struck in its
28		

1	entirely. The exhibit is a press	
2	release concerning detection of	
3	perchlorate in Well V-201,	
4	apparently written by an	
5	unknown person on behalf of	
6	SCV Water. The press release	
7	contains various statements	
8	attributed to other individuals.	
9	The press release is hearsay, as it	
10	is a statement by an unknown	
11	declarant. Within the statement	
12	are numerous instances of	
13	hearsay within hearsay, as the	
14	press release quotes other people	
15	and other sources throughout.	
16	Moreover, there is no showing	
17	that whoever wrote this press	
18	release is at all qualified to opine	
19	on the issues offered therein,	
20	including opinions concerning	
21	where the alleged contamination	
22	originated.	
23	Gee Declaration,	• Lack of foundation
24	Exhibit AC, Saugus	• Hearsay. Fed. R. Evid. 802
25	Formation Volatile	• Lack of personal knowledge
26	Organic Compound	Fed. R. Evid. 602.
27	Investigation Report	

	<ul style="list-style-type: none">• Unqualified Expert Opinion. Fed. R. Evid. 104(a) and 702• Noncompliance with Fed. R. Civ. Pro. 56(e) <p>Exhibit AC should be struck in its entirety. First, the report is not executed under penalty of perjury by the authors. “The substance of this report was not sworn to by the alleged expert. Therefore, the purported expert's report is not competent to be considered on a motion for summary judgment.” <u>Fowle v. C&C Cola</u>, 868 F.2d 59, 67 (3rd Cir. 1989) (finding that expert's report attached to the declaration of plaintiff's counsel does not comply with Rule 56(e), since the substance of the report was not sworn to by the alleged expert).</p> <p>Second, there is no indication of what credentials or expertise the authors of this report possess that would qualify them to make the opinions contained in this report.</p>	
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1	Gee Declaration,	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802	Sustain/Overrule
2	Exhibit AD, Letter from	<ul style="list-style-type: none">• Lack of Foundation.	
3	Jenny Anderson to Cliff	<ul style="list-style-type: none">• Lack of personal knowledge.	
4	Cheng	<p>Fed. R. Evid. 602</p>	
5			
6		Exhibit AD of Mr. Gee's	
7		Declaration constitutes a letter	
8		dated January 22, 2018, which is	
9		purportedly authored by Jenny	
10		Anderson at SVC Water to Cliff	
11		Cheng at the DDW. The letter	
12		contains inadmissible hearsay	
13		statements of Ms. Anderson that	
14		are offered to prove the truth of	
15		the matters asserted, namely the	
16		status of Well 205. The letter	
17		should be excluded entirely.	
18			

19 **V. ZELIKSON DECLARATION**

<u>Evidence</u>	<u>Objection</u>	<u>Ruling</u>
21 Zelikson Declaration ¶ 3 22 (2:23-3:3). SCV Water 23 has purchased 24 replacement water for its 25 supply wells V-201 and 26 V-205 due to perchlorate	27 <ul style="list-style-type: none">• Lack of personal knowledge.• Lack of foundation.• Unreliable/improper expert• Hearsay. Fed. R. Evid. 802	28 Sustain/Overrule

1	contamination of their 2 respective water supplies. 3 SCV Water's purchase of 4 water to replace these 5 perchlorate-contaminated 6 wells was and is a 7 necessary time critical 8 removal action that is 9 specifically contemplated 10 in 40 C.F.R. § 11 300.415(e)(9). SCV 12 Water has an immediate 13 and ongoing obligation to 14 provide safe and reliable 15 drinking water to its 16 customers while also 17 maintaining compliance 18 with an Amended 19 Domestic Water Supply 20 Permit ("Drinking Water 21 Permit") issued by the 22 California State Water 23 Resources Control Board 24 Division of Drinking 25 Water ("DDW") and its 26 predecessors.	Substantial NCP compliance is a question of law and an experts only role is to supply facts for the court to consider. <i>La.-Pac.</i> <i>Corp. v. ASARCA Inc.</i> , 24 F.3d 1565, 1576 (9 th Cir. 1994). Once the factual details regarding SCVWA's conduct been established, "the court decides—as a matter of law— whether those efforts substantially comply with the NCP." <i>Id.</i> ; <i>PMC, Inc. v.</i> <i>Sherwin-Williams Co.</i> , 1997 WL 223060, at *9 (N.D.Ill. Apr.29, 1997) (rejecting expert opinion regarding whether actions substantially complied with public participation requirement because this "is a question of law"), <i>vacated in</i> <i>part on other grounds</i> , 151 F.3d 610 (7th Cir.1998). Mr. Zelikson's opinion that there has been substantial compliance with the NCP is	
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1 irrelevant and has been
2 previously struck in other
3 actions. *Aviall Services, Inc. v.*
4 *Cooper Industries, L.L.C.*, 572
5 F. Supp. 2d 673, 695 (N.D. Tx.
6 2008). The Court did find that
7 expert opinion is not entirely
8 irrelevant.

9
10 Mr. Zelikson's opinions fail to
11 show reasoning for his
12 conclusions. "The chief value of
13 an expert's testimony rests upon
14 the material from which his
15 opinion is fashioned and the
16 reasoning by which he progresses
17 from his material to
18 his conclusion." McCarrick v.
19 Pallares, 2020 WL 6800422 (E.D.
20 Cal. November 19, 2020)
21 (quoting People v. Drew, (1978)
22 Cal.3d 333, 350). Here, Mr.
23 Zelikson alleges a fact in which
24 he does not have personal
25 knowledge to make, nor does he
26 identify his source of information.
27 He then concludes that the fact

1	complies with the regulation	
2	without providing any reasoning	
3	as to why.	
4	Zelikson Declaration ¶ 3 (3:3-8). I have discussed	• Lack of personal knowledge. Fed. R. Evid. 602
5	the impacts of shutting	• Lack of foundation.
6	down a contaminated	• Unreliable/improper expert
7	well with SCV Water's	testimony.
8	Chief Operating Officer,	• Hearsay Fed. R. Evid. 802.
9	Keith Abercrombie. SCV	
10	Water must notify the	Mr. Zelikson's opinions, based on
11	DDW of any well that is	hearsay evidence and unreliable
12	shut down due to	facts, should not be considered.
13	contamination. Upon	"[A]n expert opinion cannot be
14	shutting down a well,	based on assumptions of fact
15	SCV Water seamlessly	without evidentiary support, or on
16	replaces the lost well	speculative or conjectural
17	water with purchased	factors." <u>Abarca v. Franklin</u>
18	water so that its	<u>County Water Dist.</u> , 761 F.
19	consumers' water supply	Supp.2d 1007, 1023 (E.D. Cal.
20	is not impacted.	2011) "The law is clear, however,
21		that an expert report cannot be
22		used to prove the existence of
23		facts set forth therein." <u>In re</u>
24		<u>Citric Acid Litigation</u> , 191 F.3d
25		1090, 1102 (9th Cir. 1999). Mr.
26		Zelikson should not be able to
27		
28		

1	offer facts concerning SCV	
2	Water's obligations merely	
3	because Mr. Abercrombie told	
4	Mr. Zelikson that those were its	
5	obligations.	
6	Zelikson Declaration ¶ 3	Sustain/Overrule
7	(3:8-20). While SCV	
8	Water's well shutdown	
9	procedure and	
10	replacement water	
11	purchases are in	
12	substantial compliance	
13	with the Community	
14	Relations requirement of	
15	40 C.F.R. §300.415(n)	
16	given these site-specific	
17	circumstances, SCV	
18	Water's public outreach	
19	efforts also provide the	
20	public with notification	
21	of short-term and long-	
22	term impacts of its well	
23	shutdown activities. SCV	
24	Water has notified the	
25	community of the	
26	presence of perchlorate	
27	contamination and the	
28		

1	shutdown of wells V-201	Apr.29, 1997) (rejecting expert	
2	and V-205 through	opinion regarding whether	
3	annual water reports,	actions substantially complied	
4	information sheets, and	with public participation	
5	press releases issued	requirement because this “is a	
6	directly to the public	question of law”), <i>vacated in</i>	
7	and/or made publicly	<i>part on other grounds</i> , 151 F.3d	
8	available on its website.	610 (7th Cir.1998).	
9	Further, SCV Water		
10	conducts monthly	Mr. Zelikson’s opinion that	
11	technical meetings	there has been substantial	
12	pursuant to the 2007	compliance with the NCP is	
13	Castaic Lake Water	irrelevant and has been	
14	Agency Litigation	previously struck in other	
15	Settlement Agreement	actions. <i>Aviall Services, Inc. v.</i>	
16	(“2007 Settlement	<i>Cooper Industries, L.L.C.</i> , 572	
17	Agreement”) which	F. Supp. 2d 673, 695 (N.D. Tx.	
18	Whittaker attends as the	2008). The Court did find that	
19	party responsible for the	expert opinion is not entirely	
20	contamination. DDW and	irrelevant.	
21	the California		
22	Department of Toxic	Mr. Zelikson’s opinions are based	
23	Substances Control	on unreliable facts and fail to	
24	(“DTSC”) also attend the	show reasoning for his	
25	monthly technical	conclusions. “The chief value of	
26	meetings.	an expert’s testimony rests upon	
27		the material from which his	
28			

1	opinion is fashioned and the 2 reasoning by which he progresses 3 from his material to his 4 conclusion.” <u>McCarrick v.</u> 5 <u>Pallares</u> , 2020 WL 6800422 (E.D. 6 Cal. November 19, 2020) 7 (quoting <u>People v. Drew</u> , (1978) 8 22 Cal.3d 333, 350). Here, Mr. 9 Zelikson states the community 10 outreach in which SCV Water has 11 allegedly undertaken. He then 12 concludes that these actions 13 comply with the community 14 relations requirement of a 15 regulation. He fails to provide 16 any reasoning on why these 17 efforts comply with the regulation 18 he cites. The opinion fails to 19 assist a trier of fact determine 20 compliance.		
21	Zelikson Declaration ¶ 22 3(3:21-25). Finally, SCV 23 Water adequately 24 documented the 25 associated costs in the 26 form of calculations 27 prepared by Keith	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Unreliable/improper expert testimony Fed. R. Evid. 104(a) and 702.• Hearsay. Fed. R. Evid. 802	Sustain/Overrule

1	Abercrombie using a	
2	methodology previously	Substantial NCP compliance is a
3	used to calculate	question of law and an experts
4	replacement water losses	only role is to supply facts for the
5	in the 2007 Settlement	court to consider. <i>La.-Pac.</i>
6	Agreement in substantial	<i>Corp. v. ASARCA Inc.</i> , 24 F.3d
7	compliance with the	1565, 1576 (9 th Cir. 1994).
8	Documentation	Once the factual details
9	requirement of 40 C.F.R.	regarding SCVWA's conduct
10	§300.160.	been established, “the court
11		decides—as a matter of law—
12		whether those efforts
13		substantially comply with the
14		NCP.” <i>Id.</i> ; <i>PMC, Inc. v.</i>
15		<i>Sherwin-Williams Co.</i> , 1997
16		WL 223060, at *9 (N.D.Ill.
17		Apr.29, 1997) (rejecting expert
18		opinion regarding whether
19		actions substantially complied
20		with public participation
21		requirement because this “is a
22		question of law”), <i>vacated in</i>
23		<i>part on other grounds</i> , 151 F.3d
24		610 (7th Cir.1998).
25		
26		Mr. Zelikson’s opinion that
27		there has been substantial
28		

1	compliance with the NCP is	
2	irrelevant and has been	
3	previously struck in other	
4	actions. <i>Aviall Services, Inc. v.</i>	
5	<i>Cooper Industries, L.L.C.</i> , 572	
6	F. Supp. 2d 673, 695 (N.D. Tx.	
7	2008).	
8		
9	Mr. Zelikson baselessly	
10	concludes that Mr.	
11	Abercrombie's methodology to	
12	calculate replacement water	
13	losses advanced in Mr.	
14	Abercrombie's affidavit	
15	constitutes adequate	
16	documentation of associated	
17	costs. Mr. Zelikson admits that he	
18	is unaware of the equations used	
19	by Mr. Abercrombie and that the	
20	results can be as much as 50%	
21	off. Trowbridge Decl. ¶ 33, Ex.	
22	AE, Zelikson Depo., at 123:15-	
23	126:10, 126:19-129:12.	
24		
25	Mr. Zelikson does not provide	
26	any reasoning for why this	
27	method complies with the	
28		

1	regulation cited. As set forth 2 below, the methodology 3 advanced in Mr. Abercrombie's 4 declaration is fundamentally 5 flawed. Without reasoning, Mr. 6 Zelikson's opinions are not 7 helpful and should not be 8 considered. "The chief value of 9 an expert's testimony rests upon 10 the material from which his 11 opinion is fashioned and the 12 reasoning by which he progresses 13 from his material to his 14 conclusion." <u>McCarrick v.</u> 15 <u>Pallares</u> , 2020 WL 6800422 (E.D. 16 Cal. November 19, 2020) 17 (quoting <u>People v. Drew</u> , (1978) 18 22 Cal.3d 333, 350). 19		
20	Zelikson Declaration ¶ 4 21 (4:13-24). While SCV 22 Water's operation of the 23 PTF and associated 24 purchase and discharge of 25 blend water to the river is 26 in substantial compliance 27	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation.• Unreliable/improper expert testimony. Fed. R. Evid. 104(a) and 702• Hearsay. Fed. R. Evid. 802	Sustain/Overrule

1	with the Community	Substantial NCP compliance is a	
2	Relations	question of law and an experts	
3	requirement of 40 C.F.R.	only role is to supply facts for the	
4	§300.415(n) given these	court to consider. <i>La.-Pac.</i>	
5	site-specific	<i>Corp. v. ASARCA Inc.</i> , 24 F.3d	
6	circumstances, SCV	1565, 1576 (9 th Cir. 1994).	
7	Water's public outreach	Once the factual details	
8	efforts also provide the	regarding SCVWA's conduct	
9	public with notification	been established, "the court	
10	of short-term and long-	decides—as a matter of law—	
11	term impacts of its	whether those efforts	
12	discharge and purchased	substantially comply with the	
13	blend water activities,	NCP." <i>Id.</i> ; <i>PMC, Inc. v.</i>	
14	including submitting	<i>Sherwin-Williams Co.</i> , 1997	
15	quarterly reports to the	WL 223060, at *9 (N.D.Ill.	
16	RWQCB and notifying	Apr.29, 1997) (rejecting expert	
17	the community of its	opinion regarding whether	
18	NPDES Permit violations	actions substantially complied	
19	through a public	with public participation	
20	information sheet made	requirement because this "is a	
21	available on SCV	question of law"), <i>vacated in</i>	
22	Water's website. The	<i>part on other grounds</i> , 151 F.3d	
23	quarterly reports and	610 (7th Cir.1998).	
24	violation report are also	Mr. Zelikson's opinion that	
25	publicly available	there has been substantial	
26	through the State Water	compliance with the NCP is	
27	Resources Control		
28			

1	Board, California	irrelevant and has been	
2	Integrated Water Quality	previously struck in other	
3	System Project website.	actions. <i>Aviall Services, Inc. v.</i>	
4	Further, this information	<i>Cooper Industries, L.L.C.</i> , 572	
5	is shared with all	F. Supp. 2d 673, 695 (N.D. Tx.	
6	attendees at SCV Water's	2008).	
7	monthly technical	Moreover there is no basis for	
8	meetings pursuant to the	the opinion since he does not	
9	2007 Settlement	establish that any of the sources	
10	Agreement.	that he claims satisfied the	
11		public participation	
12		requirements asked for comment	
13		or even discussed SCVWA's	
14		decision to purchase water from	
15		the State Water Project.	
16		126:19-129:12.	
17			
18		Mr. Zelikson's opinions are based	
19		on unreliable facts and fail to	
20		show reasoning for his	
21		conclusions. "The chief value of	
22		an expert's testimony rests upon	
23		the material from which his	
24		opinion is fashioned and the	
25		reasoning by which he progresses	
26		from his material to his	
27		conclusion." <u>McCarrick v.</u>	
28			

1	<p><u>Pallares</u>, 2020 WL 6800422 (E.D.</p>	
2	<p>Cal. November 19, 2020)</p>	
3	<p>(quoting <u>People v. Drew</u>, (1978)</p>	
4	<p>22 Cal.3d 333, 350). Here, Mr.</p>	
5	<p>Zelikson states the community</p>	
6	<p>outreach in which SCV Water has</p>	
7	<p>allegedly undertaken. He then</p>	
8	<p>concludes that these actions</p>	
9	<p>comply with the community</p>	
10	<p>relations requirement of a</p>	
11	<p>regulation. He fails to provide</p>	
12	<p>any reasoning on why these</p>	
13	<p>efforts comply with the regulation</p>	
14	<p>he cites. The opinion fails to</p>	
15	<p>assist a trier of fact determine</p>	
16	<p>compliance.</p>	
17	<p>Zelikson Declaration ¶ 4</p>	<p>• Lack of personal knowledge. Fed. R. Evid. 602</p>
18	<p>(4:24-5:4) Finally, SCV</p>	<p>• Lack of foundation</p>
19	<p>Water adequately</p>	<p>• Unreliable/improper expert</p>
20	<p>documented the</p>	<p>testimony. Fed. R. Evid. 104(a)</p>
21	<p>associated costs in the</p>	<p>and 702</p>
22	<p>form of calculations</p>	<p>• Hearsay. Fed. R. Evid. 802</p>
23	<p>prepared by Keith</p>	<p>Substantial NCP compliance is a</p>
24	<p>Abercrombie using a</p>	<p>question of law and an experts</p>
25	<p>methodology previously</p>	<p>only role is to supply facts for the</p>
26	<p>used to calculate</p>	
27	<p>replacement water losses</p>	

1	in the 2007 Settlement	court to consider. <i>La.-Pac.</i>	
2	Agreement in substantial	<i>Corp. v. ASARCA Inc.</i> , 24 F.3d	
3	compliance with the	1565, 1576 (9 th Cir. 1994).	
4	Documentation	Once the factual details	
5	requirement of 40 C.F.R.	regarding SCVWA's conduct	
6	§300.160. Those	been established, “the court	
7	calculations are discussed	decides—as a matter of law—	
8	further in the Declaration	whether those efforts	
9	of Keith Abercrombie in	substantially comply with the	
10	Support of Plaintiff	NCP.” <i>Id.</i> ; <i>PMC, Inc. v.</i>	
11	Santa Clarita Valley	<i>Sherwin-Williams Co.</i> , 1997	
12	Water Agency’s	WL 223060, at *9 (N.D.Ill.	
13	Replacement and Blend	Apr.29, 1997) (rejecting expert	
14	Water Damages, which is	opinion regarding whether	
15	attached to my expert	actions substantially complied	
16	report. A true and correct	with public participation	
17	copy of my report,	requirement because this “is a	
18	including Mr.	question of law”), <i>vacated in</i>	
19	Abercrombie’s	<i>part on other grounds</i> , 151 F.3d	
20	declaration, is attached	610 (7th Cir.1998).	
21	hereto as Exhibit A.		
22	Zelikson Declaration ¶ 4	Mr. Zelikson’s opinion that	
23		there has been substantial	
24		compliance with the NCP is	
25		irrelevant and has been	
26		previously struck in other	
27		actions. <i>Aviall Services, Inc. v.</i>	
28			

1	<p><i>Cooper Industries, L.L.C.</i>, 572</p>
2	<p>F. Supp. 2d 673, 695 (N.D. Tx.</p>
3	<p>2008).</p>
4	
5	<p>Mr. Zelikson baselessly</p>
6	<p>concludes that Mr.</p>
7	<p>Abercrombie's methodology to</p>
8	<p>calculate replacement water</p>
9	<p>losses advanced in Mr.</p>
10	<p>Abercrombie's affidavit</p>
11	<p>constitutes adequate</p>
12	<p>documentation of associated</p>
13	<p>costs. Mr. Zelikson admits that he</p>
14	<p>is unaware of the equations used</p>
15	<p>by Mr. Abercrombie and that the</p>
16	<p>results can be as much as 50%</p>
17	<p>off. Trowbridge Decl. ¶ 33, Ex.</p>
18	<p>AE, Zelikson Depo., at 123:15-</p>
19	<p>126:10, 126:19-129:12. Mr.</p>
20	<p>Zelikson does not provide any</p>
21	<p>reasoning for why this method</p>
22	<p>complies with the regulation</p>
23	<p>cited.</p>
24	
25	<p>Without reasoning, Mr.</p>
26	<p>Zelikson's opinions are not</p>
27	<p>helpful and should not be</p>
28	

1	considered. "The chief value of 2 an expert's testimony rests upon 3 the material from which his 4 opinion is fashioned and the 5 reasoning by which he progresses 6 from his material to his 7 conclusion." <u>McCarrick v.</u> 8 <u>Pallares</u> , 2020 WL 6800422 (E.D. 9 Cal. November 19, 2020) 10 (quoting <u>People v. Drew</u> , (1978) 11 22 Cal.3d 333, 350).		
12	Zelikson Declaration ¶ 13 5. Since beginning 14 operation of the Saugus 15 Perchlorate Treatment 16 Facility ("SPTF") and 17 PTF, SCV Water has 18 been obligated to meet 19 the requirements of the 20 Drinking Water Permit 21 and meet the applicable 22 or relevant and 23 appropriate requirements 24 ("ARARs") for the 25 perchlorate cleanup 26 pursuant to 40 C.F.R. 27	<ul style="list-style-type: none">• Lack of personal knowledge. Fed. R. Evid. 602• Lack of foundation• Unreliable/improper expert testimony. Fed. R. Evid. 104(a) and 702• Hearsay. Fed. R. Evid. 802 <p>Paragraph 5 of Mr. Zelikson's declaration should be struck in its entirety. Mr. Zelikson has no personal knowledge concerning the actions SCV Water took and Mr. Zelikson fails to identify the source of the proffered</p>	Sustain/Overrule

1	§300.400(e) and (g). SCV	information. Without establishing	
2	Water undertook several	any personal knowledge	
3	actions to meet these	concerning the treatment	
4	obligations, including:	facility's operations, or what Mr.	
5	a. DDW-directed efforts	Zelikson reviewed to make these	
6	to reduce volatile organic	factual assertions, there is no	
7	compound ("VOC")	foundation for where these facts	
8	concentrations in SPTF-	came from. "The law is clear,	
9	treated water, b.	however, that an expert report	
10	Application for an	cannot be used to prove the	
11	amendment to the	existence of facts set forth	
12	Drinking Water Permit to	therein." <u>In re Citric Acid</u>	
13	include PTF-treated	<u>Litigation</u> , 191 F.3d 1090, 1102	
14	water, c. Preparation of a	(9th Cir. 1999). Without personal	
15	2015 <i>Saugus Formation</i>	knowledge or an identified	
16	<i>Volatile Organic</i>	source, the facts asserted by Mr.	
17	<i>Compound Investigation</i>	Zelikson in this paragraph are	
18	<i>Report</i> ("VOC	without foundation and are not	
19	Investigation Report") by	properly considered within an	
20	CH2MHill to identify	expert report.	
21	potential sources of		
22	VOCs threatening SCV	Moreover, substantial NCP	
23	Water's compliance with	compliance is a question of law	
24	the Drinking Water	and an experts only role is to	
25	Permit, and d.	supply facts for the court to	
26	Preparation of a 2020	consider. <i>La.-Pac. Corp. v.</i>	
27		<i>ASARCA Inc.</i> , 24 F.3d 1565,	
28			

1	draft <i>Engineering</i>	1576 (9 th Cir. 1994). Once the
2	<i>Evaluation/Cost Analysis</i>	factual details regarding
3	(“EE/CA”) by Advisian	SCVWA’s conduct been
4	to evaluate alternatives to	established, “the court decides—
5	address the perchlorate	as a matter of law—whether
6	and VOCs threatening	those efforts substantially
7	SCW Water’s compliance	comply with the NCP.” <i>Id.</i> ;
8	with the Drinking Water	<i>PMC, Inc. v. Sherwin-Williams</i>
9	Permit and preventing	<i>Co.</i> , 1997 WL 223060, at *9
10	issuance of an	(N.D.Ill. Apr.29, 1997)
11	amendment to the	(rejecting expert opinion
12	Drinking Water Permit to	regarding whether actions
13	accommodate the PTF.	substantially complied with
14		public participation requirement
15		because this “is a question of
16		law”), <i>vacated in part on other</i>
17		grounds, 151 F.3d 610 (7th
18		Cir.1998).
19		
20		Mr. Zelikson’s opinion that
21		there has been substantial
22		compliance with the NCP is
23		irrelevant and has been
24		previously struck in other
25		actions. <i>Aviall Services, Inc. v.</i>
26		<i>Cooper Industries, L.L.C.</i> , 572
27		
28		

1	F. Supp. 2d 673, 695 (N.D. Tx. 2008).		
6	All references to the 2020 7 draft Engineering 8 Evaluation/Cost Analysis 9 (“EE/CA”) in the 10 Zelikson Declaration and 11 information derived 12 therefrom. 13 Pages 5, 30, 35, 38, 40, 14 41, 45, 46	<ul style="list-style-type: none">• Failure to disclose document in discovery. Fed. R. Civ. Pro. 37• Lack of foundation. <p>Defendant has specifically requested Plaintiff, on several occasions, to produce the 2020 draft Engineering Evaluation/Cost Analysis in discovery. To date, Plaintiff has refused, despite multiple attempts to meet and confer. The discovery dispute is waiting to be heard in an informal discovery conference. The non-disclosure of a document is a basis for exclusion from evidence. “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a</p>	Sustain/Overrule

1	<p>motion . . ." Fed. R. Civ. Pro.</p>	
2	<p>37(c)(1). It would be</p>	
3	<p>fundamentally unfair to allow</p>	
4	<p>Plaintiff to provide a document to</p>	
5	<p>its expert witness but refuse to</p>	
6	<p>produce the document to</p>	
7	<p>Defendant in discovery. The</p>	
8	<p>information gleaned by Mr.</p>	
9	<p>Zelikson from the EE/CA should</p>	
10	<p>be struck.</p>	
11	<p>Zelikson Declaration,</p>	<p>Sustain/Overrule</p>
12	<p>Exhibit A, Declaration</p>	
13	<p>of Keith Abercrombie</p>	
14	<p>(pp 85-91)</p>	
15	<ul style="list-style-type: none">• Lack of foundation• Lack of personal knowledge.	
16	<p>Fed. R. Evid. 602</p>	
17	<ul style="list-style-type: none">• Hearsay. Fed. R. Evid. 802• Unqualified expert opinion Fed.	
18	<p>R. Evid. 104(a) and 702.</p>	
19	<p>Keith Abercrombie's Declaration,</p>	
20	<p>which was submitted in support</p>	
21	<p>of Plaintiff's Replacement and</p>	
22	<p>Blend Water Damages should be</p>	
23	<p>excluded in its entirety.</p>	
24	<p>In the declaration, Mr.</p>	
25	<p>Abercrombie purports to set forth</p>	
26	<p>a formula to calculate the cost of</p>	
27	<p>replacement and blend damages.</p>	

1	However, he refers to the	
2	calculations only as estimates,	
3	and Mr. Zelikson conceded that	
4	the results may be off by as much	
5	as 50%. Trowbridge Decl. ¶ 33,	
6	Ex. AE, Zelikson Depo., at	
7	123:15-126:10.	
8		
9	In reality, the declaration is	
10	merely a series of estimated	
11	quantities with no explanation of	
12	how the estimates were derived	
13	and without any documentary	
14	support for the estimates. The	
15	numbers Mr. Abercrombie comes	
16	up with are utterly without	
17	foundation. Additionally, there is	
18	no evidence within the	
19	declaration that Mr. Abercrombie	
20	possesses the expertise to make	
21	the estimations and opinions	
22	contained in his declaration.	
23		

24 Date: December 14, 2020 BASSI, EDLIN, HUIE & BLUM LLP

25 By: /s/Michael E. Gallagher
26 MICHAEL E. GALLAGHER
27 Attorneys for Defendant and Third-Party
28 Plaintiff WHITTAKER CORPORATION

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